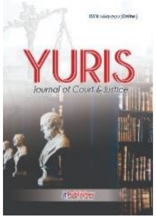

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Legal Protection of Workers with A Specific Time Work Agreement (PKWT) in The Transfer of Outsourcing Companies Following The Enactment of Law No. 6/2023

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ABSTRACT

Employment relations can occur due to the existence of work, orders, and wages. Indonesian labor law recognizes two forms of employment relations, which are employment relations with a Specific Time Work Agreement (PKWT) and an Indefinite Time Work Agreement (PKWTT). This research aims to obtain further understanding of Government Regulation No. 6/2023 on Job Creation. This regulation is a result of the Government's efforts to fulfill legal protection of people's rights to work and a decent livelihood for humanity through job creation. This research uses a statutory approach and a conceptual approach. The types of legal materials used are primary, secondary and tertiary legal materials which are then systematically inventoried and categorized to solve real problems and try to formulate accurately, clearly and appropriately about the comparison of Law No. 13/2003 on Manpower and the Government Regulation on Job Creation (Law No. 6/2017 on the Stipulation of Government Regulation in Lieu of Law No. 2/2016 on Job Creation into Law). The results indicated that employees who are bound by a Specific Time Work Agreement (PKWT) after the enactment of the Government Regulation in Lieu of the Job Creation Law receive legal protection and compensation from outsourcing companies. This compensation is given to outsourced employees after the end of the work agreement, such as outsourcing companies, in accordance with the provisions stipulated in the preceding regulation.

Keywords: *Orders, Outsourcing, Wages*

INTRODUCTION

The globalized world has been affected by the COVID-19 pandemic, which first spread to Wuhan, China, and then to almost every part of the world, drastically influencing the economy. No country is exempt from COVID-19, every country is attempting to protect its people from its effects, although some countries are experiencing difficulties due to the high number of deaths and casualties in various places. This has caused the economy to be completely paralyzed and unemployment to increase significantly.

Due to the pandemic, including in Indonesia, the government is required to implement a Large-Scale Social Restrictions (PSBB) policy to prevent its spread. The impact of this lockdown has inhibited economic growth either through company production, market share, or manpower.[1] The unstable outlook for the economy in 2020 is particularly due to the impact of the pandemic on economic growth. In an effort to reduce losses, many businesses have resorted to labor efficiency, resulting in many workers being laid off, which in turn has increased unemployment and poverty. In addition to the reduction in the number of workers, the COVID-19 pandemic has also had an impact on reducing the income or wages of workers in various employment sectors.

The drafting of the Job Creation Law is organized in detail in the expectation that it will result in changes or the creation of new laws and regulations. Therefore, the government considers it important to present the Omnibus Law on Job Creation, expecting structural economic changes that can encourage stronger economic growth in all sectors. If this Job Creation Law is not implemented immediately, then employment could shift to more competitive countries with higher competitiveness. Thus, the unemployment rate in Indonesia will increase further, and the country will be stuck within the low per capita income country.

The government is not willing to let this situation happen, hence they issued a new policy in lawmaking with the aim of restoring the economy. While being affected by the COVID-19 Pandemic, the Indonesian people were surprised by a new policy from the government, which was the use of the Omnibus Law method in the formation of Draft Legislation. This policy then received rejection from the community because several regulations and/or materials were considered to cause tension between workers or outsourcing companies and the community. The formation of the Draft Law (RUU) through the Omnibus Law method would be targeted at three major laws. including:

1. Job Creation Law;

[1] Kementerian Koordinator Perekonomian Republik Indonesia, "Laporan Kajian Dampak Pandemi Covid-19 Terhadap Ketenagakerjaan Di Indonesia," 2021, https://www.ekon.go.id/source/publikasi/Dampak Pandemi Covid-19 terhadap Ketenagakerjaan Indonesia.pdf.

2. MSME Empowerment Bill: Financial Sector Development and Strengthening Bill; and
3. Taxation Law: Bill on Tax Provisions and Facilities for Economic Recovery.

The Job Creation Bill is the main focus of attention among the three bills as it directly impacts workers and society. The government initiated the Job Creation Bill with the aim of improving and optimizing the Indonesian economy, with the expectation of attracting capital investment into the country.[2] One of the main issues of the material in the Job Creation Draft Law is the employment-related provisions relating to laborers or outsourced workers.[3]

Regulations are constantly changing in line with the times. Since the New Order era until the reformation, outsourced workers' efforts in fighting for their fate have often experienced obstacles and barriers. This is due to workers' lack of understanding of their rights, especially after the enactment of the Omnibus Law on Job Creation which amended or deleted Articles 64, 65, and amended Article 66 of the Labor Law which regulates the limitations of work that could be performed.[4]

The Job Creation Law, in essence, is still difficult for outsourced workers to accept and has caused opposition among them. This opposition is caused by the outsourcing regulations in the Job Creation Law that are considered to exploit and dehumanize outsourced workers, as well as the difficulty of identifying their rights and finding solutions to problems that often occur. Unilateral action against outsourced workers who work without a direct employment agreement with the company they work for, but are tied to an outsourcing company with an employment agreement with the company they work for, is also an emerging problem.

In the context of a transfer of a company where an employee or outsourced worker works, the question arises whether the agreement made between the worker and the company before the transfer is still valid or must be renewed. This relates to worker protection, wages, welfare, and working conditions, as well as the company's responsibility in dealing with disputes that may arise in the future. This type of work system leaves workers vulnerable to uncertain, unsafe and unprotected working conditions. Considering the aforementioned context, this article aims to highlight the issue of legal protection for workers who have a Specific Time Work Agreement (PKWT) in the context of outsourcing company

[2] Munadhil Abdul Muqsith, "UU Omnibus Law Yang Kontroversial," *'ADALAH* 4, no. 3 (October 2020), https://doi.org/10.15408/adalah.v4i3.17926.
[3] Gabriel Tryogi Rahmadi Pardosi and Jamil, "Legal Politics of Easing the Admission of Foreign Workers under Law No. 11/2020 on Job Creation," *IUS POSITUM: Journal of Law Theory and Law Enforcement* 2, no. 3 (2023).
[4] Sela Nopela Milinum, "Problematika Fleksibilitas Outsourcing (Alih Daya) Pasca-Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja Klaster Ketenagakerjaan," *Jurnal Hukum Lex Generalis* 3, no. 5 (May 2022): 412–32, https://doi.org/10.56370/jhlg.v3i5.119.

transfers after the enactment of Government Regulation in Lieu of Law No. 2/2022 on Job Creation. Then, the objective of this research is to obtain further understanding of Government Regulation No. 6/2023 on Job Creation.

RESEARCH METHODOLOGY

This research applies the normative legal research method, which focuses on analyzing the rules and norms contained in positive law, especially those related to legal protection for outsourced workers and workers with a Specific Time Work Agreement (PKWT). Using a descriptive analysis approach, this research describes the phenomenon being studied and analyzes the rules of law that are the source of the concept of legal protection for outsourcing and its problems.

The purpose of this research in general is to explore the concept of the Omnibus Law on Job Creation Law in the perspective of labor law, with a focus on the resistance or opposition of the community in fighting for rights and protection for outsourcing and the role of the government in responding to issues of rejection of the Job Creation Law by workers and society in general. The applied approach is normative juridical, using primary materials in the form of information from sources, informants, and respondents, as well as secondary materials from books and related legal expert papers. This research also involves a literature review to collect legal materials, which are then processed and analyzed using the deductive method to reveal a clear and systematic picture of the occurred facts.

RESULT AND DISCUSSION

Implementation of a Specific Time Work Agreement for Outsourced Workers

In preparing a work agreement, there are several basic requirements that must be met before the agreement can be implemented. One of them is an agreement between the two parties. For an agreement to be valid, the following conditions need to be fulfilled:

1. The agreement between the two parties regarding the terms for binding themselves.
2. The parties to the agreement must be of legal age in accordance with applicable regulations.
3. There is certainty regarding the matters being agreed upon.
4. The agreement must be made without any elements of fraud.
5. The object of the agreement must be clear and not contrary to the law.[5]

[5] Prita Amalia and Garry Gumelar Pratama, *Hukum Perjanjian Perdagangan Internasional* (CV Keni Media, 2020).

Employers are entitled to change the status of outsourced workers from a Specific Time Work Agreement (PKWT) to an Indefinite Time Work Agreement (PKWTT).

However, the indefinite-term employment status in the company is applicable if:

1. The indefinite-term employment agreement is desired by the employer (company);
2. The switch to an indefinite-term employment agreement is accepted by the outsourced worker;
3. There is certainty regarding the change in status agreed upon;
4. Better or increased welfare;
5. There is a guaranteed prospect of a future after becoming indefinite-term employment.

Employment Relations and Employment Agreements for Outsourced Workers

Recruitment of employees by outsourcing companies is, in principle, similar to the process of hiring employees in general. However, in this case, employees are recruited by a labor service provider company previously known as an outsourcing service provider, instead of by the company that needs labor. Once recruited, the employee will be placed in another company as needed. In this system, the outsourcing service provider company usually pays the employee first, then sends a bill to the company using its services.[6]

A number of aspects that should be considered in a work contract include the validity period of the agreement and the suitability of the agreement with the period of employment offered. Usually, the employment contract between the outsourced employee and the service provider company follows the validity period of the cooperation contract between the service provider company and the employer company. The intention of this is to ensure that when the employer company terminates its cooperation with the service provider company, the employee's employment contract with the employer company also terminates as well. Work agreements between outsourced workers and outsourcing companies can be based on either Specific Time Work Agreement (PKWT) or Indefinite Time Work Agreement (PKWTT). Regarding the content of both types of agreements, it can refer to the minimum content contained in the fixed-term employment agreement as described in Article 13 of Government Regulation No. 35/2021.

The implementation of work between outsourced workers and employers involves a binding, which must be in accordance with applicable legal provisions.

[6] Ena Atikawati and Raswan Udjang, "Strategi Rekrutmen Dan Seleksi Terhadap Kinerja Karyawan," *Jurnal Perilaku Dan Strategi Bisnis* 4, no. 1 (2016).

Therefore, regulations on employment are established to ensure that the binding is carried out in accordance with the established rules. In the context of the employment relationship, rights and obligations arise between workers and employers.[7] As explained by Soepomo, in the relationship between an outsourced worker and an employer, there is a position that shows the basics of the working relationship, such as the rights and obligations of the employer towards the worker, and vice versa.[8] In the practice of outsourcing, the employment relationship is in contrast to the general employment relationship because it involves a triangular employment relationship structure. This means that there are three components involved in the employment relationship, including the company where the outsourcing is carried out, the service provider company (outsourcing company), and the worker or outsourcer.

From the explanation of the employment relationship above, it can be concluded that an employment relationship is a legal relationship between an outsourcing company and a worker or outsourcer, and is a partial work assignment agreement between a company that provides workers or outsourcers and a company where outsourcers work based on a work contract. The legal relationship that arises in an outsourcing cooperation agreement is a partnership or civil partnership. Legally, outsourced workers are not bound to the company they work for; their legal relationship is with the outsourcing company based on the employment contract they sign. In the employment contract, it is stated that the worker will be placed and work in the company using the outsourcing company, with working conditions that follow the regulations in the company using the outsourcing company.

Legal Protection for Outsourced Workers Following the Enactment of Law No. 6/2023

Kansil states that legal protection includes a series of actions that must be taken by law enforcement to ensure the mental and physical security of individuals from interference and threats from anyone.[9] Legal protection, according to Article 1 Paragraph 2 of Law No. 13/2003 on Manpower, refers to individuals with the ability to perform work in order to produce goods and/or services for personal or community needs.[10] By referring to the statement in the Article, it can be concluded that anyone with the capability to do a job and receive a salary from an employer aims to produce goods and/or services. The concept of workers includes private employees, civil servants, individuals who have not

[7] Budi Santoso, *Hukum Ketenagakerjaan Perjanjian Kerja Bersama : Teori, Cara Pembuatan, Dan Kasus* (Malang: UB Press, 2012).
[8] Zaeni Asyhadie and Rahmawati Kusuma, *Hukum Ketenagakerjaan Dalam Teori Dan Praktik Di Indonesia* (Prenada Media, 2019).
[9] Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara*, 11th ed. (Jakarta: Rajawali Pers, 2019).
[10] Pemerintah Pusat, “Undang-Undang (UU) Nomor 13 Tahun 2003 Ketenagakerjaan” (Jakarta, 2003).

worked or are unemployed, those who are looking for work, as well as individuals with independent professions such as lawyers, doctors, and so on.

Outsourced employees are technically contract employees who work for a certain period of time based on a work agreement between the outsourcing company and the employer company. The definition of an outsourced employee is an individual or group of individuals employed under the supervision or command of another person or institution, based on a Specific Time Work Agreement (PKWT). The working period in a fixed-term contract is usually no more than 2 years and can only be extended once for a maximum of 1 year in accordance with Article 59 of Law No. 13/2003 on Manpower.[11]

Outsourcing is a contract system in which a company outsources certain work to a second party in order to share the risk and reduce the burden on the company. The transfer of risk in the agreed matter lies entirely in the hands of both parties, between the employer and the outsourced worker. If one party disagrees, then the work agreement will not occur in accordance with the provisions. Prosperity will be created when both parties agree to it without any pressure. Work agreements can be agreed in written or verbal form, and must be implemented in accordance with applicable law.

Law enforcement against outsourced workers should not differ much from legal protection for workers in general. From a legal perspective, outsourcing-related regulations should be on par with regular workers. While the work is still ongoing, the new service provider company should respect the continuity of the existing employment contract, without changing the terms previously agreed upon, unless there are changes to increase benefits for the worker or outsourcer due to experience and longer working experience. Outsourced workers fundamentally do not have a legal employment relationship with the company they work for, as there is no legal tie between the outsourced worker and the company in a contract. Outsourced workers only have a legal relationship with the service provider company based on an agreed work agreement.

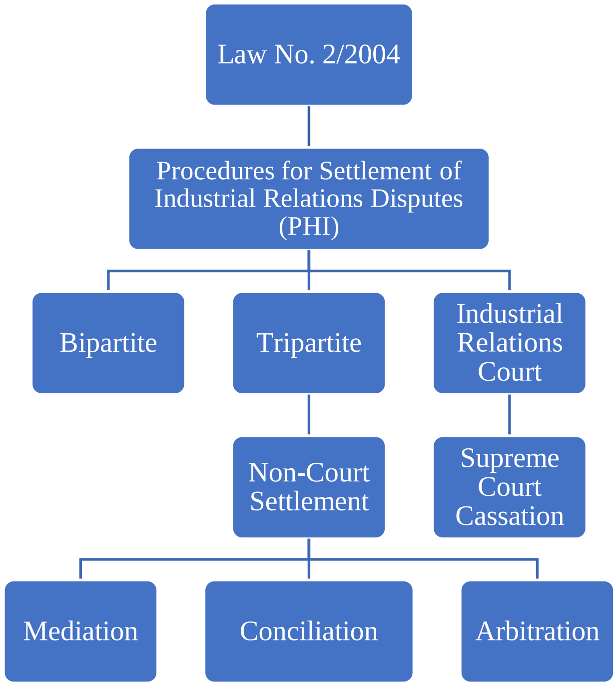
Law No. 2/2004 on Industrial Relations provides detailed provisions regarding dispute resolution through procedures that have been agreed by the parties, which is settlement outside the court (Non Litigation). The purpose of Alternative Dispute Resolution (ADR) is to settle disputes out of court based on the agreement of the parties, by avoiding the litigation process. Disputes in Industrial Relations are sometimes unavoidable, therefore, all parties involved must have an open attitude and readiness to resolve problems that arise.

Settlement through Tripartite Negotiation involves a third party through mediation, conciliation, and arbitration processes, which is generally referred to as the non-litigation or out of court stage. Should the bipartite or tripartite settlement fail or not reach an agreement, then the dispute may be submitted to the Industrial Relations Court or through litigation. Globally, the dispute resolution mechanism

[11] Pusat.

in Industrial Relations can be divided into two channels, litigation and non-litigation, as illustrated in the following chart:

Chart 1. Litigation and Non Litigation Settlement Chart



Source: Processed Data by Researchers

Settlement of Industrial Relations Disputes (PHI) can be conducted through two methods, which are settlement outside the court (non-litigation) and through the court (litigation). In the context of out of court settlement of industrial relations disputes, the focus is on bipartite negotiation, mediation, conciliation, and arbitration. The following is a description of the out-of-court dispute resolution procedure:

1. Bipartite Settlement

   Settlement of disputes by consensus by the disputing parties without interference from other parties can result in an agreement that benefits both parties. In addition, deliberation can reduce the cost, time, and energy required. Bipartite negotiations can be conducted between workers (outsourcing) and service provider companies in the settlement of industrial relations disputes outside the court (non-litigation).

   Article 3 Paragraph 1 of Law No. 2/2004 substantially stipulates that settlement of industrial relations disputes must be conducted prior to bipartite negotiations with deliberation to reach an agreement. Bipartite settlement in the concept of Alternative Dispute Resolution (ADR) is known as negotiated settlement, in which the parties attempt to resolve the dispute without involving other parties with the aim of reaching a mutual agreement on the basis of harmonious and creative cooperation.

In the Great Dictionary of Indonesian Language, negotiation refers to the process of bargaining through negotiations to reach a mutual agreement between the parties involved. Peaceful dispute resolution through negotiation is the approach taken by the parties to the dispute. From this provision, it can be understood that every dispute in industrial relations, regardless of its type, must be tried to be resolved through bipartite negotiations, which must be completed within a maximum of 30 business days from the commencement of the negotiations.

At this stage, the results of the negotiations are recorded in minutes signed by all relevant parties. The minutes include the identity of all parties, both workers and companies, the date of the negotiation, details of the problems, opinions, solutions that have been reached, and conclusions drawn, with signatures from all parties involved.

Bipartite settlement of disputes is fundamentally imperative, as explained in Article 83 Paragraph 1 of Law No. 2/2004. The article states that if the plaintiff does not attach the minutes of settlement through bipartite negotiation, mediation, or conciliation, then the judge of the Industrial Relations Court will return the lawsuit to the plaintiff.

In order to provide a further detailed description of this matter, it is necessary to consider the provisions of Article 4 Paragraph 1 of Law No. 2/2004, which reads as follows: If bipartite negotiations are unsuccessful as stipulated in Article 3 Paragraph 3, then one or both parties shall record their dispute with the agency responsible for the local manpower sector, attaching evidence that efforts to resolve the dispute through bipartite negotiations have been made.

Furthermore, in the provisions of Article 4 Paragraph 2 of Law No. 2/2004, it is stated as follows: If the evidence as mentioned in Paragraph 1 is not attached, then the agency responsible for the field of labor will return the file to be completed within a maximum of 7 (seven) business days as of the date of receipt of the return of the file.

If the negotiation efforts are unsuccessful or have reached an impasse, the disputants should record their dispute with the agency responsible for the local labor sector. They should attach minutes showing that attempts to settle through bipartite negotiations have been made and failed. This indicates that settlement through litigation or the Industrial Relations Court should be pursued further.

2. Mediation Settlement

The term mediation refers to the resolution of a dispute by involving a third party as a mediator. This implies that a party who is not directly involved in the dispute helps to resolve the issues that arise, by being neutral and impartial to one of the parties. Goodpaster explains that mediation is a negotiated problem-solving process in which a neutral and impartial outsider works with disputants to help them reach a satisfactory agreement.[12] In contrast to the role of a judge, the mediator has no power to make decisions regarding the dispute between the parties. Instead, the parties authorize the mediator to help them resolve the dispute between them. The assumption is that the mediator will be able to change the social dynamics and forces in the conflict relationship by influencing the personal beliefs and behaviors of the parties. This can be done by providing knowledge or information, or using a more effective negotiation process, thus helping the participants to resolve the issues in dispute.

Legal protection of outsourced workers in the termination of employment is a heavy burden for them, as outsourced workers depend on this work to fulfill their needs and those of their families. Theoretically, both the employer and the outsourced worker have the freedom and right to terminate the employment relationship based on the contract principle contained in the law of agreements. However, in practice, employers are more dominant in terminating employment relationships.

Outsourced workers actually do not want the termination of employment. The government has a direct interest in the issue of termination of employment (PHK) because it is responsible for the continuity of the national economy, ensuring public order, and protecting the economically weak. Therefore, the government issued laws and regulations that prohibit employers from conducting layoffs without following the regulated procedures, as explained below, and requires that layoffs can only be carried out after obtaining a determination from the Industrial Relations Dispute Settlement Institution (PPHI).

The Manpower Law regulates the procedure for termination of employment of outsourced workers, which involves several requirements that must be met, including:

1. Termination of employment due to violation of law, or by court order with a verdict with permanent legal force.
2. Termination of employment that is desired by both parties, such as service provider employers and outsourced workers, in accordance with the agreed agreement.

[12] G. Goodpaster, *Panduan Negosiasi Dan Mediasi*, Seri Dasar Hukum Ekonomi (Proyek ELIPS, Departemen Kehakiman R.I., 1999).

3. Termination of employment at the initiative of the employer or outsourced worker.

Legal protection for outsourced workers who experience termination of employment is regulated in Article 156 Paragraph 2 of Government Regulation in Lieu of Law No. 2/2022 on Job Creation. The article stipulates that the provision of severance pay to outsourced employees affected by layoffs is regulated in Government Regulation No. 2/2022 on Job Creation. Law No. 6/2023 regarding the stipulation of Government Regulation in Lieu of Law No. 2/2022 on Job Creation as a Law, was enacted to replace Law No. 11/2020 on Job Creation which was declared unconstitutional by the Constitutional Court under certain conditions. In regulating the amount of severance pay for termination of employment (PHK) of outsourced employees, the Government requires employers to pay severance pay to employees affected by layoffs. The amount of severance pay has been regulated in Article 156 Paragraph 2 of the Government Regulation in Lieu of the Job Creation Law:

1. If the working period is less than one year, the severance pay is equivalent to one month's wage.
2. If the working period reaches one year or more, but less than two years, the severance pay is equivalent to two months' wages.
3. If the working period reaches two years or more, but less than three years, the severance pay is equivalent to three months of wages.
4. If the working period reaches three years or more, but less than four years, the severance pay is equivalent to four months of wages, and so on, in granting severance pay to outsourced workers.

If the company falls into the category of the small or lower-middle sector and is unable to pay the entire compensation stipulated by this law, then based on Article 16 Paragraph 6, the amount of compensation for outsourced workers can be determined through an agreement between the employer and outsourced workers. The wages referred to in this provision include basic wages and fixed allowances. If the worker's wage does not include fixed allowances, then the calculation will be based on the allowance wage or only the basic wage.

In addition to the end of a work period or the completion of a work period, a fixed-term employment agreement can also end due to a court decision or a decision of an industrial relations dispute settlement institution with permanent legal force, such as a bankruptcy verdict against a company. In addition, a work agreement can also end due to certain circumstances or events stipulated in the work agreement, company regulations, or collective labor agreement.

CONCLUSION

The decision of the Constitutional Court on the Job Creation Law will become unconstitutional (legal void) permanently, which makes the President and the House of Representatives can be considered to have committed an unlawful act due to the uncertainty of the implementation of the Job Creation Law. To avoid unconstitutionality, Government Regulation in Lieu of Law No. 2/2022 on Job Creation was issued on December 30, 2022, which was later enacted into Law No. 6/2023 by the President of the Republic of Indonesia, meeting the requirements of an urgent need to resolve legal issues immediately.

The drafting of legal regulations related to outsourcing should be a priority to prevent any abuse from the employers. This is especially relevant when there is a change in outsourcing, as outsourced workers who still have outsourced status immediately become workers of the newly selected vendor. As long as the work provided is still ongoing, the new service provider company must continue the pre-existing work contract without changing the previously agreed terms, unless there are changes aimed at increasing the benefits for workers or outsourced workers due to their increased experience and working period.

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